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In the United States Court of the first Judicial District of the Territory of New Mexico.

The United States vs. Benigno Ortiz. } Debt on Statute

OPINION.

This action is brought, as is alleged, to recover the Statutory penalty for a settlement upon lands belonging to an Indian tribe, in violation of the provisions of Sec 11, of the act of Congress of Jan 30 1834, entitled "an act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers," and commonly called the "intercourse act," which Section is as follows

"Sec. 11. And be it further enacted That if any person shall make a settlement on any lands belonging, or secured or granted by treaty with the United States to any Indian tribe, or shall survey or shall attempt to survey such lands, or designate any of the boundaries by trees, or otherwise, such person shall forfeit and pay the sum of one thousand dollars."

The petition filed herein charges the defendant at the time mentioned in the "did make a settlement on, and now occupies and is settled on lands belonging to the Pueblo tribe of Indians of the Pueblo of Cochiti said lands, then and there, and at the time of bringing this suit belonging to the said Pueblo tribe of Indians of the Pueblo of Cochiti aforesaid, and secured to them by patent from the said United States."

To the petition a demurrer has been filed, raising questions not only of form, but of substance. As a question of substance disposes of the cause, the Court will not consider those of more form in this opinion.

The demurrer and the argument of Counsel thereon, raises the fundamental question as to whether the Pueblo Indians of the Territory of New Mexico are Indians such as are contemplated by the act regulating intercourse with the Indian tribes, and preserving peace on the frontiers, approved February [illegible] 1834, vol. [illegible] page [illegible] section [illegible] That act [illegible] trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, and to carry into effect various treaty stipulations made with various Indian tribes." If the Pueblo Indians are not Indians within the meaning of that act, then the penalties therein provided for the violation of its provisions cannot be enforced against the defendant. The Pueblo Indians are not mentioned in any treaty with the United States, nor in any act of Congress, nor in any executive order, nor in any decision of the Courts of the United States, except in the case of Montoya vs. Gonzales, decided at the September Term 1851 of the Supreme Court of the United States, and reported in 12 Howard's Reports, page 164. In that case the Court, in speaking of the Pueblo Indians, says: "At the time of the conquest of Mexico by the Spaniards, the Indian tribes were within the region described as that afterwards granted by grant since confirmed by the Indian country in the first section of this

Mexico as elsewhere. This Court is therefore justified in taking judicial notice of the past history and present condition of the Pueblo Indians, as well as their status under the laws of the Mexican Republic, and their present status under the laws of the United States and this Territory. The Court [illegible] determination of this question [illegible] to facts and circumstances [illegible] worthy of consideration.

[illegible] Pueblo Indians [illegible] lived in villages and [illegible] have generally [illegible] As far as [illegible] [illegible] [illegible]

in the territories of New Mexico and Utah."

If the Pueblo Indians are not such an "Indian tribe" as is contemplated in the foregoing Sections which contain all the law upon the subject, or if the laws of the United States do not without violation of the letter and spirit of the Constitution and treaties of the government, recognize them as coming within that provision then this action must fail.

The Court will now proceed to the consideration of this question. In this discussion, the first question is, What was the intention of the law making power of the government in enacting the above laws and What is meant by Indian tribes in them? At the time of the passage of the "Intercouse act," nearly all of the uncivilized tribes of Indians were within the then limits of the United States were within the region described as the Indian country in the first section of the law, viz. "all that part of the United States west of the Mississippi, and not within the State of Missouri and Louisiana or the Territory of Arkansas and also that part of the United States east of the Mississippi river, and not within any State to which the Indian title has not been extinguished."

The area referred to at that time, with the exception of Missouri and Louisiana and the Territory of Arkansas, was almost entirely unoccupied by the white race, and was in the absolute possession and occupancy of the Indian tribes of the whole country which were organized under what had been known as the Indian government. Within this area from the latest treaties to wit That part of the United States peopled by the whites, and governed by states, civilized Indians were found to remain, and were exempted from the operations of this law. The intention of the law makers to exclude from the operations of the law all tribes within the territorial limits of the county as fully settled by the fact that the States of Missouri and Louisiana and the Territory of Arkansas were not mentioned in the law, while all other territory was specially excepted. The whole country of the United States was manifestly legislated upon with reference to Indian tribes. The legislation on the frontiers, the establishment of tribes to protect the settlements of the whites from the depredations found within the limits of the states, were all with reference to Indian tribes. The

Santiago (Ohio) Jefe Político del Territorio de
Tierra Alfaro.

Habiendo José Miguel Howell nacional del Estado de Virginia en los Unidos del Norte América cumplido con las condiciones y requisitos que previene la ley de 11. de Abril de 1828. del Congreso Gral. que arregla el modo con que deben conceder se la Carta de naturaleza á los Extrangeros, y acompañando los documentos que lo acreditan; declaro al referido por los presentes, naturalizado en los Estados Unidos Mexicanos, en virtud de la autoridad que por aquella ley me confiere. Santa Fé 4. Enero 18. de 1832.

Santiago Ohio

Tierra.

Teodosio Lares
Diputado
Srio.